

THE WHITE HOUSE

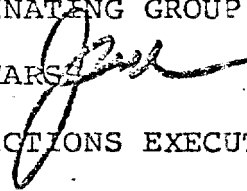
WASHINGTON

December 17, 1975

MEMORANDUM FOR

MEMBERS OF THE INTELLIGENCE
COORDINATING GROUP

FROM:

JACK MARSH 

SUBJECT:

RESTRICTIONS EXECUTIVE ORDER

Attached for your consideration are the following:

1. Draft decision memorandum which focuses on the outstanding substantive disagreements, based on October 28 draft Order.
2. A revised restrictions Order which is an attempt to stress the restrictions and narrow the exceptions. (We tried the approach of separating the announcement of restrictions from the exceptions -- but it is our general view that this might mislead the public as to the scope of the restrictions.)
3. Draft fact sheet explaining the draft Executive Order.

May we please have your comments on all three by noon, December 19. In reviewing the new draft Order, consider to what extent the substance of the preceding draft may have been changed.

MEMORANDUM TO:

SUBJECT: Draft Executive Order Imposing Restrictions
on Intelligence Activities

Attached is the most recent draft of the Executive Order imposing restrictions on intelligence activities other than those of the FBI. Its primary provisions prohibit foreign intelligence agencies (or any other agency engaged in foreign intelligence or counterintelligence activities) from:

- Collecting and analyzing information on the domestic activities of U.S. citizens (and certain aliens).
- Physically or electronically surveilling U.S. citizens (and certain aliens) within the United States.
- Opening U.S. mail in violation of law.

Strong substantive disagreements still exist among the various concerned agencies and your advisers with respect to some of its provisions. Most of the major disagreements concern proposed exceptions to the general prohibitions.

The major issues for your decision are:

(1) Whether to include an exception which would allow the collection, analysis, and dissemination of information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working ^{SECRETLY} in collaboration with a foreign nation

or organization, but only if collected abroad, or from foreign sources. (Section II (a) ⁽ⁱ⁾⁽ⁱ⁾ ~~(2)(ii)~~). This exception was proposed by CIA, to allow it to gather ^{abroad or from foreign sources} and utilize information related to Americans involved in international terrorist or narcotics activities and Americans who may not have committed any crime but are working with foreign organizations or governments. The latter category would include an American supplying non-classified information to a foreign government, for example, on the movement of civilian ships from a U.S. port.

Pro:

- This exception recognizes that international terrorist and narcotics activities are legitimate subjects of interest for foreign intelligence agencies.

- It recognizes that the domestic activities of Americans ^{SECRETLY} working for foreign governments or organizations are of counter-intelligence interest.

- Intelligence Reporting on such individuals does not cause CIA to exert any "police or law enforcement powers" in violation of the National Security Act.

- It contains the limitation that the excepted information must have been collected abroad or from foreign sources. Often foreign intelligence agencies are the only elements of our government who can obtain information from these useful sources.

Con:

Delete

- The exception is too broad. Any person who deals with foreign corporations would be covered.

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- The CIA, prohibited by statute from having any "police, subpoena, [or] law-enforcement powers," should not become involved in identifying Americans participating in narcotics or terrorist activities.

Decision:

_____ Accept (Recommended by: CIA)

_____ Reject (Recommended by: _____)

_____ Accept a more limited exception covering only citizens engaged in international terrorist or narcotics activities or working for a foreign nation. *Instead of merely "involved in international terrorist or narcotics activities"* (Recommended by: working in collaboration with a foreign nation)

(2) Whether to adopt an exception which would permit original sharing of information on domestic activities of U.S. citizens among intelligence agencies and other federal agencies under guidelines of the Attorney General. (Section ~~II~~ ^{IV} ~~(a)(2)(v)~~). This exception, proposed by NSC, is designed to permit the CIA to obtain information from other federal agencies (primarily the FBI) on the domestic activities of U.S. citizens which it would not otherwise be permitted to collect under this order.

Pro:

- This exception would give CIA and other foreign intelligence agencies access to data helpful in determining

whether various domestic groups have contacts with foreign governments or organizations.
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*- Possible abuses of this exception would be limited by the Attorney General's guidelines.

Con: Delete - Prohibited by Section IV (b).

- It would allow intelligence agencies to receive data from federal law enforcement agencies on the domestic activities of U.S. citizens which the intelligence agencies themselves would otherwise be prohibited from collecting under the terms of this Order.

^{Modify to read}
- It would authorize the reestablishment of ^{an} Operation ^{like} CHAOS, ^{if the Attorney General guidelines so permitted and if the} ^{informatic} (CHAOS was the program under which CIA collected/-- Foreign intelligence Agency did not itself infiltrate or secretly participate largely from the FBI -- on domestic groups and U.S. citizens.) ^{in the given organization for purposes of reporting on it.}
The exposure of this program resulted in the forming of the Rockefeller Commission and the Congressional Intelligence Committees.

* Delete - Inconsistent with PRO argument at top of page
- Such an exception would likely undermine the credibility of the Order.

Decision:

_____ Accept (Recommended by: CIA)

_____ Reject (Recommended by: _____)

_____ Accept a modified provision allowing agencies to share information on the domestic activities of U.S. citizens only when the information is of the type that the receiving agency would have been permitted to collect itself under the terms of this

Order. (Recommended by: _____)
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(3) Whether to modify the provision relating to electronic surveillance. (Section II (d)) The section now prohibits "electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General." ^(b) ~~(The Justice Department would add to this a blanket prohibition against domestic electronic surveillance by the CIA.)~~ The discussion below is on this proposed amendment:
Section II (b).

Correct to reflect that a blanket prohibition against electronic surveillance by the CIA already is included in

Pro:

- As presently written, this provision merely requires compliance with existing law (which is unclear in this area) and procedures to be drafted by the Attorney General.

- The Rockefeller Commission recommends a blanket prohibition (similar to the Justice Department recommendation) of domestic electronic surveillance by the CIA.

- The CIA feels that such a restriction would not impact its effectiveness. It now conducts no domestic electronic surveillance.

Con:

- If the restriction is adopted, the CIA would be completely foreclosed from dealing with an unusual situation requiring domestic electronic surveillance of a U.S. citizen.

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Decision

_____ Accept (Recommended by: CIA :)

_____ Reject (Recommended by: _____)

EXECUTIVE ORDER _____

ESTABLISHING RESTRICTIONS ON FOREIGN
INTELLIGENCE ACTIVITIES

Previous guidance on the relationship between the intelligence agencies and United States citizens was unclear. This order clarifies that relationship by detailing those activities which are prohibited. Without setting forth all restrictions under which foreign intelligence agencies are obliged to operate, nor derogating from any other laws, rules, regulations, or directives further restricting the activities of these agencies, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering and storage, or the gathering and forwarding, of information.

(b) "Domestic activities" means activities within the United States.

(c) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign powers, organizations or their agents.

(d) "United States citizens" means United States citizens and permanent resident aliens.

(e) "Foreign counterintelligence" means activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination, or terrorism.

(f) "Incidental reception" means the receipt of information, collection of which by an agency is otherwise prohibited by this order, and which is collected in the course of an agency's authorized foreign intelligence or counterintelligence activities.

(g) "Foreign intelligence agency" means any department or agency of the United States government, or component thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence activities.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Physical surveillance of United States citizens, ^{within the United States,} except to the extent that such surveillance is in accordance with law and is:

(1) Upon written approval by the head of the foreign intelligence department or agency; ^{and is surveillance} of individuals currently or formerly employed by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure; or

(2) Of a person having contact with any persons described under subparagraph (1), or ^{WITH} foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations, but only to the extent necessary to identify such person.

(b) Electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General, and in no instance shall the Central Intelligence Agency engage within the United States in the electronic surveillance of United States citizens.

(c) Testing of electronic surveillance equipment within the United States except in accordance with law and under procedures approved by the Attorney General.

(d) Any opening of United States mail or examination of envelopes except in accordance with the provisions of United States postal laws and regulations.

(e) Access to Federal income tax returns or tax information except in accordance with statutes and regulations.

(f) Infiltration or secret participation in any organization composed primarily of United States citizens for the purpose of reporting on its activities or membership.

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(g) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

(h) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. ^{or to achieve clearly defined} No investments ^{foreign intelligence} by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

(i) Collection, evaluation, correlation or analysis, of information other than information from public sources or given voluntarily by its subject concerning the domestic activities of United States citizens except:

(1) Information about a United States citizen who in good ^{or} faith is reasonably believed to be involved in international terrorist or narcotics activities or working ^{secretly} in collaboration with a foreign nation or organization, but only if the information is collected abroad or from foreign sources in the United States in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(2) Information related to the performance of agency contractors, for purposes of contract administration.

(3) Information concerning criminal activities received through incidental reception, provided it is only transmitted to law enforcement agencies with appropriate jurisdiction.

SECTION III. Any federal agency seeking foreign intelligence within the United States from United States citizens shall disclose to such citizens its true identity. When collection of foreign intelligence within the United States results in the incidental reception of information from unknowing United States citizens, however, the receiving agency shall be permitted to make appropriate use of such information.

SECTION IV. No information on the domestic activities of United States citizens shall be transmitted to a foreign intelligence agency (or to any other federal agency to aid it in engaging in foreign intelligence or foreign counterintelligence) from any other federal agency unless:

(a) The information had been lawfully compiled by the transmitting agency in furtherance of its authorized mission;

(b) The information is of a type which the receiving agency would itself have been permitted to collect under the provisions of this order;

(c) The information is provided in furtherance of the authorized mission and responsibilities of the receiving agency;

(d) The information is provided in good faith under a reasonable belief that the information is relevant to the receiving agency; and

(e) The information is provided under guidelines and procedures issued by the Attorney General designed to ensure the protection of the constitutional and statutory rights of United States citizens.

SECTION V. Nothing in this Order prohibits an agency from retaining information when retention is required by law, such as retention required to preserve evidence or other information for possible court action.

SECTION VI. No foreign intelligence agency shall:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or state or local police organizations of the United States except as expressly authorized by law; or

(b) Participate in or fund any law enforcement activity within the United States except as may be authorized by law.

Provided, that this prohibition shall not preclude:

(1) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(2) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION VII. Foreign intelligence agency personnel may not be detailed elsewhere within the Federal government except as ^{consistent with} authorized by law.

Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by the host agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION VIII. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION IX. Nothing in this Order shall prohibit any agency from engaging in the collection, evaluation, correlation and analysis of information on current or former employees (including military personnel and employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; voluntary sources or contacts or individuals who in good faith are reasonably believed to be potential sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given access to classified information ^{or information} which could disclose foreign intelligence or foreign counterintelligence sources and methods; provided, however, that collection of such information is done only in accordance with law and by written authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a former employee to investigate matters related to his period of employment, or in the case of a voluntary source or contact, to determine suitability or credibility.

EXECUTIVE ORDER IMPOSING RESTRICTIONS
ON FOREIGN INTELLIGENCE ACTIVITIES

Today the President issued an executive order setting forth certain restrictions on the activities of foreign intelligence agencies and other agencies which may engage in intelligence activities. ^{prohibits or} It severely restricts the following activities:

- Collection and analysis of information on the domestic activities of United States citizens and permanent resident aliens.
- Physical or electronic surveillance of United States citizens and permanent resident aliens within the United States.
- Opening of United States mail in violation of law.
- Illegally obtaining federal income tax returns or information.
- Infiltration of domestic groups for the purpose of reporting on them.
- Experimentation with drugs on humans without the subject's informed consent.
- Operation of a proprietary company which competes with United States businesses more than the minimum amount necessary to establish commercial credibility. ^{or to attain important intelligence objectives}

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- Collection of intelligence from United States citizens and permanent resident aliens within the United States without disclosing the true identity of the collecting agency.

- Sharing among agencies information on the domestic activities of United States citizens or permanent resident aliens except in compliance with stringent safeguards.

- Providing assistance to law-enforcement agencies in violation of law.

Certain limited exceptions are included to the general prohibition of collection of information on the domestic activities of United States citizens. These exceptions seek to recognize all legitimate needs of foreign intelligence agencies to collect information on the domestic activities of United States citizens.

In order to protect classified information, intelligence agencies must run security checks on applicants for employment and employees. Like any Government agency, these agencies must also check out employee backgrounds to ascertain their job suitability. Even after a person has left an intelligence agency, it has a legitimate need to maintain its records on that person should a security breach stemming from his employment occur. Similarly, each intelligence agency has an interest in

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the suitability and security worthiness of persons who

contract with it or are employees of its contractors working on its projects and requiring access to classified information.

Each intelligence agency must also maintain records on persons who, without necessarily being employed by it, are given access to its classified information. Such persons would include employees of other Government agencies who require access to its classified information and private citizens who voluntarily agree to be cleared to receive classified information in order to aid in their voluntary reporting of foreign intelligence information to the agency.

Foreign intelligence agencies or other foreign groups spend many resources seeking to penetrate (i.e., obtain information from) United States intelligence agencies. The United States agencies need to protect themselves from such activities. Such activities may involve domestic activities of United States citizens. Because United States intelligence agencies have a need to understand the operating modes of foreign intelligence agencies, there is a legitimate need for it to collect and use such information. However, the intelligence agencies are permitted to collect this type of information only abroad or from foreign ^{SOURCES} ~~services~~, since the FBI is fully capable of collecting such information from purely domestic sources. Also, because of the unique contacts of our foreign intelligence agencies with information sources abroad and

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foreign sources within the United States, and sources
are also permitted to collect, but only from these special
sources, information on United States citizens reasonably
believed to be involved in international terrorist or
narcotics activities.

In normal day-to-day business, many Americans work with
intelligence agencies and tell its employees about their
domestic activities; i.e., other Government employees meet
with intelligence agency employees; academics share informa-
tion with them; Americans who travel talk to them. In order
to allow these agencies to maintain records of such day-to-day
transactions, the order makes an appropriate exception.
Americans who enter into such contact with intelligence
agencies, however, should not therefore be subjected to
security investigations or other scrutiny merely because they
came into contact with an employee of an intelligence agency.
Therefore, this exception only allows use of that information
voluntarily supplied by the persons themselves.

The order requires that the information collected or stored
under these exceptions be confined to a type appropriate to the
purpose for which the corresponding exception was created.
For example, an agency may not collect or store information on
the political views of a United States citizen merely because
he is a contractor employee working on an agency project.

The order also allows intelligence agencies to transmit to

law-enforcement agencies information relating to criminal

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domestic activities of United States citizens which it happens to obtain incidentally to its proper foreign intelligence activities. All citizens and Government agencies have an obligation to turn information related to criminal activity over to appropriate authorities.

☐ UNCLASSIFIED

☐ INTERNAL
USE ONLY

☐ CONFIDENTIAL

☐ SECRET

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

[Redacted]

EXTENSION

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

DCI

12/19

12/19

m/612

Due at the White House at noon today.

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3.

Call [Redacted] for pick up.

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